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## *Suum cuique is our Roman justice (Shakesp. Tit. Andr. 1,1,284) – William Shakespeare, Heiner Müller and Roman fundamenta\**

*Law, says the judge as he looks down his nose,  
Speaking clearly and most severely,  
Law is as I've told you before,  
Law is as you know I suppose,  
Law is but let me explain it once more,  
Law is The Law.*

W.H. Auden "Law Like Love,"  
*The Collected Poetry of W.H. Auden*, New York 1945, pp. 74–76

### Abstract

The phrase *suum cuique* as an incarnation of "justice," like many other Latin *dicta*, is deeply enrooted in the mental consciousness of mankind, and it lives its own life as a part of the so-called universal culture. Generally speaking, reference to Roman justice served and still serves as a justification of one's own actions when such actions cannot defend themselves by their own formal correctness. It is, therefore, recourse to the eternal values, the understanding of which, however, is determined by one's own experience or by experience of a particular epoch. This is proved by words of the authors mentioned in the title of the study, though separated from each other by several centuries and having different visions of the world, they considered the embodiment of this phenomenon in the phrase *suum cuique* as the most appropriate for their own narrative and judgmental description of the reality. Shakespeare, although he undoubtedly saw in Roman justice a guarantee of justification of certain actions, referred to this idea without a deeper analysis. Müller, one of the most important German dramatists of the second half of the 20<sup>th</sup> century, screaming through the voice of Tamora, who demands "Roman justice," showed that a call for Roman *fundamenta* as well as for Roman *iura et mores* almost for the last time stands in the

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unsolved conflict with one's own inhumane actions and inflation of all values that mankind has persistently considered as permanent.

The article aims to analyse a cultural commentary on the use of the phrase *suum cuique* – a commentary understood as a way of bringing something that is analysed into the reality current for a commentator. In one dimension, this can be a dramatic comment rather than a simple description of a certain reality. Therefore, such a commentary should not be assigned only to a single commentator-narrator but to many who represent different eras.

**Key words:** justice, *suum cuique*, Roman law, drama, Shakespeare, Müller

**Słowa kluczowe:** sprawiedliwość, *suum cuique*, prawo rzymskie, dramat, Szekspir, Müller

## 1. Introduction

The phrase *suum cuique*, like many other Latin *dicta*, is deeply enrooted in the mental consciousness of mankind. Today it lives its own life as a part of the so-called universal culture<sup>1</sup> quite often deprived of its proper, *i.e.* ancient origins. As such, the phrase *suum cuique* is a kind of ideological memorial. One can also say that its presence in the cultural discourse of modernity is an expression of continuous longing for particular “universal ethics”:<sup>2</sup> *Justitia cernitur in suum cuique tribuendo*.<sup>3</sup> Many years ago Georg von Beseler stated that the philosophy of a jurist is simple: *honeste vivere, alterum non laedere, suum cuique tribuere*, and we, smart people of the 20<sup>th</sup> century, can express this idea using many more words and scientific terms yet we cannot put it better than Roman jurists.<sup>4</sup>

This study, however, does not aim to present an exhaustive analysis of a sense and importance of the aforementioned phrase neither in its ancient nor later meaning, especially because this meaning has already varied in times, being almost always bounded with the idea of natural law. What will be important here, is a subsequent and exemplarily chosen cultural commentary on this phrase – a commentary understood as a way of bringing something that is being commented into the reality current to the commentator. In other words, the study attempts to present both an analysis of the context of use of

<sup>1</sup> In almost every collection of Latin *dicta*, *sententiones*, *maximae* published so far, one can find this phrase, to refer only to: R. Tosi, *Dizionario comparato di proverbi e modi proverbiali italiani, latini, fransi, spagnoli, tedeschi, inglesi e greci antichi*, ed. 2, Milano 1952, no. 1117, 1118, 1119; Z. Landowski, K. Woś, *Słownik cytatów łacińskich. Wyrażenia. Sentencje. Przysłowia* [Dictionary of Latin Quotations. Expressions. Dicta. Proverbs], Kraków 2002, p. 540. See also statements of such authors as: K.L. Koniński, *Ex labyrintho*, Warszawa 1962, pp. 250–251; J. Gawroński, *Do źródła muz. Greckie wrażenia dyktanta* [To the Source of the Muses. Greek Impressions of a Dilettante], Warszawa 1970, p. 65; R. Ingarden, *Książeczka o człowieku* [A Short Book on a Man], Kraków 1973, pp. 106–107; J.M. Bocheński, *Szkice etyczne* [Ethical Essays], Londyn 1953, p. 106.

<sup>2</sup> See, general remarks, by: M. Korolko, *Słownik kultury śródziemnomorskiej w Polsce. Idee. Pojęcia. Miejsca z wypisami literackimi* [Dictionary of Mediterranean Culture in Poland. Ideas. Concepts. Literary Excerpts], Warszawa 2004, pp. 143–144, s.v. *dikaioyne*; *idem*, *Thesaurus albo Skarbiec łacińskich sentencji, przysłów i powiedzeń w literaturze polskiej* [Thesaurus or the Latin Treasury of Quotes, Proverbs and Dicta in the Polish Literature], Warszawa 2004, pp. 827–828, s.v. *suum cuique*.

<sup>3</sup> *Lateinische Rechtsregeln und Rechtssprichwörter*, Zusammengestellt, übersetzt und erläutert von D. Liebs, unter Mitarbeit von H. Lehmann und G. Strobel, München 1982, p. 107 J. 192.

<sup>4</sup> After: H. Otte, *Gustav Radbruchs Kieler Jahre 1919–1926*, Frankfurt am Main–Bern 1981, p. 47.

the phrase *suum cuique* understood as a commentary on it, as well as a determination of a function or functions of such a use. In a certain dimension, this type of commentary is more than a simple description; it is an endorsement as well as drama. What is more, any commentary should not be assigned only to one commentator but, *a contrario*, it should somehow be “commissioned” to many narrators representing diverse epochs.

## 2. The Ancient Tradition

*Suum cuique tribuens/tribuere* is, generally speaking, a short definition, a maxim, even a *regula iuris*,<sup>5</sup> regarded quite commonly as embracing the essence of “justice” and “equity” (*iustitia & aequitas*), the fundamentals of any system of natural law, or even an affirmation of the sanctity of human rights.<sup>6</sup> Originating from Justinian’s *Institutiones* – a 6<sup>th</sup> century A.D. “student book” it defines one of *iuris praecepta* incarnated into a formula: *honeste vivere, alterum non laedere suum cuique tribuere*, which means: “to live honestly, not to injure another, and to give everyone that which belongs to them” (I. 1,1,3).<sup>7</sup> The same statement is almost *verbatim* repeated in *Digesta*, another part of Justinian’s legislative *corpus*, attributed herein to the late classical jurist Domitius Ulpianus (1 *reg. D.* 1,1,10 pr.),<sup>8</sup> who is probably the author of the statement.<sup>9</sup> In the same *Institutiones*, “justice” is explained as *constans et perpetua voluntas ius suum cuique tribuens*, i.e. “constant and perpetual desire to give everyone what he is entitled to” (also Ulpianus, 1 *reg. D.* 1,1,10,1).<sup>10</sup> Was (this definition) approved by Roman jurists (e.g. Tryphoninus, 9 *disp. D.* 16,3,31,1: [...*et probo hanc esse iustitiam, quae suum cuique ita*

<sup>5</sup> Cf. J. Sondel, *Słownik łacińsko-polski dla prawników i historyków* [Latin-Polish Dictionary for Lawyers and Historians], Kraków 1997, s.v. *canon, regula, praeceptum, norma*, pp. 125, 661, 768, 830. For a notion of *maxima* or *regula*, see: H. Kupiszewski, *Prawo rzymskie a współczesność* [Roman Law and Contemporaneity], Warszawa 1988, pp. 133 f., 131 f.; P. Stein, *Regulae iuris. From Juristic Rules to Legal Maxims*, Edinburgh 1966, *passim*, in part. pp. 16, 33, 45, 48, 66; *idem*, *Lo svogliamento storico della nozione di “regula iuris” in diritto romano* [in:] *Antologia giuridica romanistica ed antiquaria I*, Milano 1968, pp. 97–108; B. Schmidlin, *Die römischen Rechtsregeln. Versuch einer Typologie*, Köln–Wien 1970, p. 61 f.; *idem*, “*Horoi*”, “*pithana*” und “*regulae*” [in:] *Aufstieg und Niedergang der römischen Welt. Geschichte und Kultur Roms im Spiegel der Neuern Forschung*, II.15, Berlin–New York 1976, p. 101 f.

<sup>6</sup> Comp. G. MacCormack, *Sources* [in:] *A Companion to Justinian’s Institutes*, ed. E. Metzger, London 2002, p. 1 f.; comp. also F.L. Cheyette, *Suum cuique tribuere*, “French Historical Studies” 1976, vol. 6, no. 3, p. 287 f.

<sup>7</sup> Comp. with: *Justinian’s Institutes*. Translated with an introduction by Peter Birks & Grant McLeod, with the Latin text of Paul Krueger, London 2001, p. 37: “Justice is an unswerving and perpetual determination to acknowledge all men’s rights;” “The commandments of the law are these: live honorably; harm nobody; give everyone his due.” See also an explanation by G. MacCormack, *Sources...*, p. 1 f.

<sup>8</sup> “Justice is the constant and perpetual desire to give to everyone that to which he is entitled”.

<sup>9</sup> Cf. F. Gallo, *Diritto e giustizia nel titolo primo del Digesto*, “*Studia et Documenta Historiae et Iuris*” (hereafter SDHI) 1988, vol. 54, p. 15 f. = *Opuscula selecta*, a cura di F. Bona, M. Miglietta, Padova 1999, p. 621 f.; A. Schiavone, *Giuristi e principe nelle Istituzioni di Ulpiano. Un’esegesi*, SDHI, 2003, vol. 69, p. 15 and nt. 28. Comp. also *Lateinische Rechtsregeln...*, p. 104, J. 177; p. 106 J. 192, J. 195; p. 204, S 89. D. Liebs indicated this fragment as a Pseudo-Ulpianus one.

<sup>10</sup> “The precepts of the law are the following: to live honorably, to injure no one, to give everyone his due”.

*tribuit, ut non distrahatur ab ullius personae iustiore repetitione* [...]; comp. however, *idem* 1 disp. D. 11,4,5: *iustitiam animadversionis*) and adopted by emperor Justinian in the very Late Eastern Antiquity, the *de facto* arch-famous definition (that can be proved by the number of longer or shorter studies in which authors attempted to analyse its content and its importance<sup>11</sup>), which today belongs to a widely recognised legal tradition understood as the cultural transmission (*i.e.* a tradition received and understood as tradition re-copied, translated or adopted<sup>12</sup>).<sup>13</sup> It has its specific roots in ancient wisdom and as such constitutes a component of the ancient “beauty of thought”. It was Marcus Tullius Cicero in the late Roman Republic, who for the first time linked *suum cuique* with the beauty, saying in *Tusculanae Disputationes* (5,22,63) that *suum cuique pulchrum est*<sup>14</sup> – “to each his own is beautiful”. Although it was not explicitly stated by Arpinate that it

<sup>11</sup> For a more detailed examination of the juridical sources mentioned in this *studium* only exemplary, cfr. in particular: F. Senn, *De la justice et du droit. Explication de la définition traditionnelle de la justice*, Paris 1927, *passim*; W. Cesarini Sforza, “*Ius*” e “*directum*”. *Note sull’origine storica dell’idea di diritto*, Bologna 1930, p. 15 f.; L. Wenger, *Suum cuique in antiken Urkunden* [in:] *Aus der Geisteswelt des Mittelalters. Studien und Texte zur Vollendung des 60. Lebensjahres von Freunden und Schülern gewidmet Martin Grabmann*, Bd. 2, Hrsg. A. Lang, J. Lechner, M. Schmians, Münster 1935, p. 1415 f.; A. Carcaterra, *Iustitia nelle fonti e nella storia del diritto romano*, Bari 1949, p. 82, 90; M. Villey, *Suum jus cuique tribuens* [in:] *Studi in onore di P. De Francisci*, vol. 1, Napoli 1954, p. 364 f.; G. Del Vecchio, *La giustizia*, ed. 4, Roma 1959, p. 63 f.; C. Gioffredi, *Sul problema del diritto soggettivo nel diritto romano*, “*Bollettino dell’Istituto di Diritto Romano*” [Vittorio Scialoja] (hereafter BIDR) 1967, vol. 70, p. 231, 238; A. Burdese, *Sul concetto di giustizia nel diritto romano*, “*Annali di storia del diritto*” 1970–1973, vol. 14–17, p. 108; D. Nörr, *Iurisperitus sacerdos* [in:] *Xenion: Festschrift für Pan. J. Zepos anlässlich seines 65. Geburtstages am 1. Dezember 1973*, Bd. 1, Athen–Freiburg Br.–Köln 1973, p. 555 f.; M. Kaser, *Zum ‘ius’-Begriff der Römer* [in:] *Essays in Honor of Ben Beinart* [= *Acta Juridica*] 1977, vol. 2, p. 67 f.; W. Waldstein, *Zu Ulpian’s Definition der Gerechtigkeit (D.1,1,10 pr.)* [in:] *Festschrift für Werner Flume*, Bd. 1, in Gemeinschaft mit K. Ballerstedt und F.A. Mann rgs. von H.H. Jakobs, B. Knobbe-Keuk, E. Picker, J. Wilhelm, Köln 1978, p. 225 s., 230; *idem*, *Ist das suum cuique eine Leerformel?*, *SDHI* 1995, vol. 61, p. 186 f.; *idem*, *Zur juristischen Relevanz der Gerechtigkeit bei Aristoteles, Cicero und Ulpian* [in:] *Der Gerechtigkeitsanspruch des Rechts. Festschrift für Theo Mayer-Maly*, Bd. 3: *Rechtsethik*, Hrsg. M. Beck-Mannagetta, H. Böhm, G. Graf, Wien 1996, p. 64 f.; U. Von Lübtow, *Die Anschauungen der römischen Jurisprudenz über Recht und Gerechtigkeit* [in:] *Studi in onore di Cesare Sanfilippo*, vol. 6, Milano 1985, p. 526, 530 f.; M. Diesselhorst, *Die Gerechtigkeitsdefinition Ulpian’s in D.1,1,10 pr. und die Praecepta iuris nach D. 1,1,10,1 sowie ihre Rezeption bei Leibniz und Kant* [in:] *Römisches Recht in der europäischen Tradition: Symposion aus Anlass des 75. Geburtstages von Franz Wieacker*, Hrsg. O. Behrends, M. Dießelhorst, W.E Voß, Ebelsbach 1985, p. 185, 190 f.; P. Cerami, “*Ordo legum*” e “*iustitia*” in *Claudio Trifonino*, “*Annali del Seminario Giuridico dell’Università degli Studi di Palermo*” (hereafter AUPA) 1988, vol. 40, p. 31 f.; F. Gallo, *Diritto e giustizia...*, p. 19 f. [= *idem*, *Opuscula selecta...*, p. 628 f.]; *idem*, *L’interpretazione del diritto è ‘affabulazione’?*, “*Rivista di Diritto Romano*” 2003, vol. 3, p. 39 f.; *idem*, *Aspetti peculiari e qualificanti della produzione del diritto nell’esperienza romana*, “*Rivista di Diritto Romano*” 2004, vol. 4, p. 10; *idem*, *Fondamenti romanistici del diritto europeo: a proposito del ruolo della scienza giuridica*, “*Diritto e Storia*” 2005, vol. 4, *passim* [= *Tradizione romanistica e Costituzione*, dir. da L. Labruna, a cura di M.P. Baccari e C. Cascione, vol. II?? 2, Napoli 2006, p. 1977 s.]; T. Honoré, *Ulpian. Pioneer of Human Rights*, 2 ed., Oxford 2002, p. 215; A. Schiavone, *Giuristi e principe...*, p. 15 f.; G. Van Den Bergh, *Jedem das Seine*, “*Forum historiae iuris*” 2005: [www.forhistiur.de/zitat/0503vandenbergh.htm](http://www.forhistiur.de/zitat/0503vandenbergh.htm), §§ 8-10; L. Peppe, “*Jedem das Seine*”, (uni)cuique suum, “*a ciascuno il suo*” [in:] *Tradizione romanistica e Costituzione*, vol. 2, p. 1745 f.; G. Falcone, *Ius suum cuique tribuere*, AUPA 2007–2008, vol. 52, p. 133 f. [= *Studi in onore di Remo Martini*, vol. 1, Milano 2008, p. 971 f.].

<sup>12</sup> Cf. R. Bague, *Europe, la voie romaine*, Paris 1992, p. 87 f., 88, 103 f., 108 f.

<sup>13</sup> Cf. e.g. M. Kuryłowicz, *Prawo rzymskie. Historia tradycja współczesność* [Roman Law. History Tradition Contemporaneity], Lublin 2003, pp. 153, 161 f.

<sup>14</sup> Unless noted otherwise, the classical texts are cited according to the editions of “Loeb Classical Library”, Cambridge–London, Massachusetts.

was justice which was to be beautiful – because he explained only that actions of people directed in such a way (*sc.* a way leading to justice) were, *per se*, beautiful – it still remains true that this declaration can be understood as statement that justice is beautiful, and that the Romans were the first to acknowledge it.

It was Cicero again, who in addition to the specific use of the Greek formulas δικαιοσύνη and ἀξία (*e.g.* Plat. *def.* 411 D–E; SVF III, p. 30 n. 125; p. 63 n. 262; p. 65, n. 266; p. 86 n. 374; also p. 60 n. 256; p. 69 n. 280), in his rhetoric writings combined justice as *suum cuique* with *dignitas* (*e.g.* *de inv.* 2,160: *iustitia est habitus animi communi utilitate conservata suam cuique tribuens dignitatem*; comp. *auct. ad Her.* 3.2.3: *iustitia est aequitas ius uni cuique rei tribuens pro dignitate cuiusque...*).<sup>15</sup> It was also Arpinate who in his philosophical treatises, when analysing *virtutes*, used to employ syntagma “*suum cuique*” as a definition of justice, stating, *inter alia*: *nam iustitia suum, quae cuique distribuit [...] hominum enim societas et communitas [...] iustitiam procreavit* (*de nat. deor.* 3,38), which means that “justice which assigns to each his own [...] is the offspring of human society and of the commonwealth of man”; or saying that *iustitia in suo cuique tribuendo [est]* (*de fin.* 5,67), *i.e.* “justice [is displayed] in giving each his due”.<sup>16</sup> One can also find “justice” in the same sense in *studium Noctes Atticae*, written by the scholar, Aulus Gellius, who explained that already at the turn of two epochs, the Late Republic and the Principate, and thus on the border of two qualities in the political and social history of Rome, it had been Cato the Elder, who understood such a formulation as an adequate notion of justice:

Gell. 13,24: *M. Cato consularis et censorius publicis iam privatisque opulentis rebus villas suas inexcultas et rudes ne tectorio quidem praelitas fuisse dicit ad annum usque aetatis suae septuagesimum. atque ibi postea his verbis utitur: “neque mihi” inquit “aedificatio neque vasum neque vestimentum ullum est manupretiosum neque pretiosus servus neque ancilla. si quid est”, inquit “quod utar, utor; si non est, egeo. suum cuique per me uti atque frui licet”. [...]*

On the other hand, in one of *Epistulae morales ad Lucillum* by Lucius Annaeus Seneca, and afterwards, in *Commentariorum quos ipse sibi scripsit* by Marcus Aurelius, one can find a significant explanation of justice:

Sen. *ep.* 81,7: “*hoc certe*” inquis “*iustitiae convenit, suum cuique reddere, beneficio gratiam, iniuriae talionem aut certe malam gratiam*” *verum erit istud cum alius iniuriam fecerit, alius beneficium dederit; nam si idem est, beneficio vis iniuriae extinguitur. nam cui, etiam si merita non antecessissent, oportebat ignosci, post beneficia laedenti plus quam venia debetur.*

Mar. Aur., *med.* 4,10: *Quidquid accidit, juste accidit, idque, si diligenter animadverteris, reperies: non tandum dico secundum id quod consequens est, sed secundum iustitiae rationem* (κατὰ

<sup>15</sup> Cf. F. Senn, *De la justice...*, p. 19 f. and nt. 3; U. von Lübtow, *Die Anschauungen...*, p. 529 f.; M. Dieselhorst, *Die Gerechtigkeitsdefinition*, p. 186 f.; A. Schiavone, *Giuristi e principe...*, p. 13 f. 22; W. Waldstein, *Zur Ulpian's Definition...*, p. 214 f.; *idem*, *Zur juristische Relevanz...*, p. 17 f.; L. Winkel, *Die stoische οἰκείωσις: Lehre und Ulpian's Definition der Gerechtigkeit*, “Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanische Abteilung” (hereafter ZRG RA) 1988, Bd. 105, p. 672 f.; U. Manthe, *Beiträge zur Entwicklung des antiken Gerechtigkeitsbegriffes I*, ZRG RA 1996, Bd. 113, p. 2 and nt. 2.

<sup>16</sup> Cf. B. Biondi, *Diritto e giustizia nel pensiero romano*, “Jus” 1958, vol. 9, p. 296 f.; cf. also L. Ciferri, *Conoscenza e concezione del diritto in Cicerone*, “Revue Internationale des Droits de l'Antiquité” 1994, vol. 41, p. 156 f., who directly relates Ulpianus' definition of justice with the expression *suum cuique tribuere*; comp U. von Lübtow, *Die Anschauungen...*, p. 525 f.

τὸ δίκαιον – add. P.Ś), *quasi ab aliquo, qui secundum dignitatem distribuat* (καὶ ὡς ἂν ὑπὸ τινος ἀπονέμοντας τὸ κατ' ἄξιαν- add. P.Ś). *Animadvertite igitur diligenter, ut coeperas, et quidquid agis, cum studio bonitatis age, idque eo sensu, quo quis proprie bonus dicitur. Id in omni actione serva.*

As explained by these two fine followers of the Stoics, it is fair to give everyone, in various forms, what they should have – gratitude for benevolence but revenge or unkindness for harm. This is, therefore, the right – the just – thing to do.<sup>17</sup>

The formula (like many other moral concepts) was borrowed by the Romans from the Greeks.<sup>18</sup> Aristotle in *Rhetorica* and *Ethica Nicomachea* (EN 1132 b 32 *sqq.*; also: 1130 a–b; 1131 a) described “justice” as one of the most important fundaments of virtue (ἀρετή), claiming that it is a virtue which requires assigning to every man what is owed to him in accordance with law; Aristotle further confronted it with “injustice” recognized as actions in opposition to law:<sup>19</sup>

Arist. rhet. 1366 b: ἔστι δὲ δικαιοσύνη μὲν ἀρετὴ δι' ἣν τὰ αὐτῶν ἕκαστοι ἔχουσι, καὶ ὡς ὁ νόμος; ἀδικία δὲ δι' ἣν τὰ ἀλλότρια, οὐχ ὡς ὁ νόμος.

Δικαιοσύνη, identified with ethical perfection, is the most important and the greatest of virtues; in relation to other men, a realization of the ethical perfection *per se*, and the latter has to rely on the dedication of what men deserves. However, it was already the master of the Stagirite, Plato, who in his dialogue *Politeia*, while mentioning the trial of poet Simonides of Ceos (*polit.* 331 E, 433 E–434 A), concluded that justice (δικαιοσύνη) is the ability to give each what is due to him:<sup>20</sup>

Plat. *polit.* 331 E: τὸ τὰ ὀφειλόμενα ἑκάστῳ ἀποδιδόναι δίκαιόν ἐστιν.

Then, as confirmed by literary transfers which happened over the centuries of the development of European culture, this natural law principle was adopted by the Christians from the Greek philosophers and from pagan Rome, and after being baptized so-to-speak, it eventually became a part and parcel of the Christian emperor Justinian's legal reforms, the basis of his vision of law and justice, his law's *Rechtsprinzip* and its *Gerechtigkeitsprinzip*. It remains a fundamental and essential definition of the Western concept of justice, and, indeed, it is inarguably universal in its separate “second”,

<sup>17</sup> Cf. M. Villey, *Suum jus...*, p. 364 f., who explained: “A chacun ce qu'il vaut, son juste prix, la récompense ou le chatiment proportionnés à ces mérites: ἄξιαν (in the sense of a reward or punishment that one deserves), suivant les modèles grecs. Mais aussi bien (le mot cuique pouvant être entendu au neutre) la justice déterminera le statut de chaque chose selon l'équité. Le rôle du juriste sera donc (s'il est vrai que le but d'Ulpian est d'en proposer la formule), d'attribuer à chacun et à chaque chose, la condition juridique qui lui revient”. This interpretation is adopted in subsequent romanistic literature, cf. e.g.: G. Luraschi, *Il “porae-mium” nell'esperienza giuridica romana*, [in:] *Studi in onore di Arnaldo Biscardi*, vol. 4, Milano 1983, p. 250–45; comp. S. Tzitzis, *Dikaion dianemitikon et ius suum cuique tribuens. de la Retribution des Grecs à celle des Glossateurs*, “Studi Economico-Giuridici Università di Cagliari”, 1991–1992, vol. 54: *Il Problema della pena criminale tra filosofia greca e diritto Romano* (Atti Convegno Cagliari 1989), Napoli 1993, p. 221 f.; see also U. Manthe, *Beiträge zur Entwicklung des Antiken Gerechtigkeitsbegriffes II: Stoische Würdigkeit und die Iuris Praecepta Ulpianus*, ZRG RA, 1997, Bd. 114, pp. 1–12.

<sup>18</sup> See, a synthetic analysis of this borrowing in G. Falcone, *Ius suum...*, p. 140 f.

<sup>19</sup> See, in part. W. Waldstein, *Zur juristischen Relevanz...*, p. 64.

<sup>20</sup> Cf. Calvinus, *Lexicon iuridicum Iuris Caesarei*, ed. Genevae 1602, p. 1481, who wrote that Ulpianus in his definition “Simonidem et Platonem imitatus”. After: G. Falcone, *Ius suum...*, p. 144.

“third”, or simply “next” life.<sup>21</sup> Dutch philosopher Andreas Kinneging summed up these phenomena of subsequent lives of the phrase *suum cuique* by saying: “Through Plato, Aristotle, Cicero, Augustine, Thomas Aquinas, and the *Corpus Iuris Iustiniani*, this idea of justice [*suum cuique tribuere*] for a long time remained a standard notion in Western thinking”.<sup>22</sup>

### 3. A Commentary on the Tradition

A commentary<sup>23</sup> can be said in chorus – both a single- and multi-epoch one – by authors who refer to themselves, by interpreters who try to understand what is commented, and by commentators who links with a text. An interpretation and a comment are expressions of emotions, almost like in the Japanese theatre, where a role calls for physical and mental transformation, sometimes in order to shock the audience by modern, noisy, and outlandish way of a performance.<sup>24</sup> The repertoire of roles that commentator has at his disposal is undetermined, and it exceeds that of a Viewer, to a Supporter, a Guide, a Partner, a Choir, a Creator, or – unfortunately – only a simple Duplicator. However, roles always grow into the bodies, and masks grow into the faces of commentators; being a commentator means to do it not without a punishment. There is also no monopoly on a role or a mask – a commentator articulates or remains silent on what he is exposed to or what he is subjected to. A commentary is therefore, not a privilege, and not everyone has a chance to exhibit his own emotions, which appear in connection with the text “lost” somewhere and somehow in the cultural tradition, sometimes even used at the level of random verbal games. However, a question must arise about the place of such a game and about its coordinates (in the worst case, the original meaning of a commented text disrupts coordinates) which can transform cultural signs into a swamp of ideas. Therefore, to demonstrate a tragedy in whose stomach lurks a farce which can also be a virus from the future, one can use major or minor memorials: “The phrase *suum cuique*”, whose timeliness is tomorrow, had over the centuries retained and still has retained precisely such a “monumental importance” of some phenomena.

<sup>21</sup> To use the concept invented by Paul Vinogradoff, *Roman Law in Mediaeval Europe* (first publ. London–New York 1909, cit. after the repr. version: New Jersey 2001), p. 4, who spoke about “the second life of Roman law”.

<sup>22</sup> *The Geography of Good and Evil – Philosophical Investigations*, transl. I. Hardy, Wilmington 2009, p. 150; see also P. Stein, J. Shand, *Legal Values in Western Society*, Edinburgh 1974, p. 60 f.; R.W.M. Dias, *Jurisprudence*, 3 ed., London 1970, pp. 163 f., 183.

<sup>23</sup> See *Słownik terminów literackich* [A Dictionary of Literary Terms], ed. J. Sławiński, 2 ed. Wrocław–Warszawa–Kraków–Gdańsk–Łódź 1989, s.v. *komentarz* and *komentarz literacki* [commentary and literary commentary], pp. 229–230.

<sup>24</sup> See: T. Izutsu, *Metafizyczne tło teorii Nō. Analiza „dziewięciu etapów Zeami’ego”* [The Metaphysical Background of the Theory of Noh. An Analysis of Zeami’s ‘Nine Stages’], and D. Keene, *Realizm i nierealność w teatrze japońskim* [Reality and Unreality in Japanese Drama], both in: *Estetyka japońska* [Japanese Aesthetics], 1. *Wymiary przestrzeni* [Dimensions of Space], ed. K. Wilkoszewska, Kraków 2001, pp. 71 f., 89 f.

### 3.1. Shakespeare and *Titus Andronicus*

An expert on Shakespeare's works, Jan Kott, wrote that if the cruel tragedy *Titus Andronicus* was one act longer, the author would have touched the spectators seated in the first row and he would have drown them in the sea of blood as he did the protanists.<sup>25</sup>

*Titus Andronicus* by Shakespeare<sup>26</sup> is an early play (believed to have been written between 1588 and 1593), often regarded as not a "happy" work.<sup>27</sup> It seems that the problem for interpreters had to be (as it still has to be) caused by the amount of horror, almost a grotesque excess of sufferings and deaths, barbarisms compared to which the tragedy of Seneca seems a pastiche, even though one cannot say whether deliberately.<sup>28</sup> It is significant, however, that such an excess of blood and violence, such decadence, such descent into low life, are often needed in theatre, such a type of description of reality was extremely popular at that time of the Elizabethan theatre in the 16<sup>th</sup> century.<sup>29</sup> Therefore, in *Titus Andronicus*, perhaps one of his most maligned plays, *the other* – the third world has uncompromisingly and violently entered the territory of the first one – *the old one*, and the latter has boldly responded to it.

In Shakespeare's *Titus Andronicus* the Romans and the Goths are similarly savage or vicious, yet Romans are set apart because they are more like the early modern Europeans.<sup>30</sup> Therefore, the Goths are the third world, the Goths defeated by the Romans under the command of Titus Andronicus. But it was the defeated Queen Tamora who be-

<sup>25</sup> J. Kott, *Szekspir, dramaturg elżbietański* [Shakespeare, an Elizabethan dramatist], Warszawa 1965, p. 27 f. See also other comments by this author (*ibidem*): "*Titus Andronicus* is by no means the most brutal of Shakespeare's plays. More people die in *Richard III*. *King Lear* is a much more cruel play. In the whole Shakespearean repertoire, I can find no scene as revolting as Cordelia's death. Upon reading, the cruelties of *Titus* may seem ridiculous. But I have seen it on the stage and found it a moving experience. Why? While watching *Titus Andronicus*, we come to understand – perhaps more than by looking at any other of Shakespeare's plays – the nature of his genius: he gave an inner awareness to passions; cruelty ceased to be merely physical. Shakespeare discovered the moral hell. He discovered heaven as well. But he remained on earth" [Transl. P. Świącicka].

<sup>26</sup> See W. Shakespeare, *Titus Andronicus* (Oxford Shakespeare), ed. E.M. Waith, Oxford 1984, 2 ed. 1994. All references to the play cite this edition.

<sup>27</sup> See, e.g. a commentary of a Polish translator of this play, Maciej Słomczyński, *Posłowie* [Afterword] [in:] *Najżałośniejsza Rzymska Tragedia Titusa Andronicusa: Shakespeare. Dzieła w przekładzie Macieja Słomczyńskiego*, Kraków 1986, p. 139 f., who speaks about the accumulation of grotesque cruelty. An account of harsh criticism the play received, from Samuel Johnson to T.S. Eliot, can be found in the introduction to Jonathan Bate's edition of *Titus Andronicus*: J. Bate, *Introduction* [in:] W. Shakespeare, *Titus Andronicus*, ed. by Jonathan Bate (The Arden Shakespeare), London 2003, pp. 1–121, in part. pp. 33–37. Daniel Kane recognises an anticipation of Artaud's theatre of cruelty in *Titus Andronicus*. Cf. D. Kane, *The Vertue of Spectacle in Shakespeare's Titus Andronicus*, pp. 1–17.

<sup>28</sup> Shakespeare may have consulted the *Gesta Romanorum*, a well-known thirteenth-century collection of tales, legends, myths, and anecdotes in Latin, which took figures and events from history and spun fictional tales around them. In particular, excerpts from Seneca (e.g. *Thyestes*) and Ovid (e.g. *Metamorphoses*) were known to such authors of the Elizabethan period as Thomas Kyde or Christopher Marlowe, from the commonly used school grammar book by William Lyly. Cf. R. Dyboski, *William Shakespeare*, Kraków 1927, p. 10 f.

<sup>29</sup> M. Słomczyński, *Posłowie* [Afterword], p. 139 f.

<sup>30</sup> For an analysis of the rhetorical construction of barbarism in the period, see I. Smith, *Barbarian Errors: Performing Race in Early Modern England*, "Shakespeare Quarterly" 1998, vol. 49, pp. 168–186; see also R. Broude, *Roman and Goth in Titus Andronicus*, "Shakespeare Studies" 1970, vol. 6, pp. 27–34.



came a willing wife of emperor Saturninus and a real ruler of Rome. Her sons have raped and mutilated a daughter of Titus – Lavinia, and secret lover of Tamora – Aaron the Moor had tried to blow up the center of Rome. Finally Lucius, a son of Titus, was looking for help for Rome from the Goths and to receive it he had to become one of them. Lucius and the Goths obtained the power over Rome.

An invocation to Roman justice appears at the very beginning of the play, and it stabilised Titus's conflict with Natural law which lasts throughout the play. In the first scene of the play, Tamora's son Alarbus is ritually sacrificed. Pleading for him, Tamora accuses Titus of "cruel, irreligious piety" (1,1,133). She denounces his decision as barbaric and unethical from a perspective of Natural law. Afterwards, in order to celebrate the appointment of the new emperor, Titus unreservedly gives his daughter Lavinia to Saturninus (1,1,244–52) but unbeknownst to Titus, Bassianus had already been betrothed to her. A fray ensues in which Titus's sons carry Lavinia away from him. Marcus protests:

*"Suum cuique" is our Roman justice.*

*The prince [Bassianus – add. P.S.] in justice seizeth but his own.* (1,1,280–81)

The stakes of the dispute increase until Titus kills his son to protect Lavinia.<sup>31</sup> When one of the other sons reprimands him, Titus responds:

*Nor thou, nor he, are any sons of mine.*

*My sons would never so dishonour me.* (1,1,294–95)

The Latin phrase meaning "to each his own" – the basic principle of Natural law – and the twice used term "justice" as well as the legal term "seize" for taking possession of property set the legal tone of this dispute. It ends with Titus killing his son Mucius because he does not obey his father's decision. This instance shows that Titus values observance of the Roman rule more than his children's lives. It suggests furthermore that the stability of the Roman tradition and the precedent are deeply connected with the stability of Titus' identity as a Roman.

The Romans, as dominating *others* at the opening of the play, are forced to become more like the real dominant culture. In their quest for justice, Romans exchange their honor for a more sophisticated, politicised (and in some respects more early modern) dimension of honor – masculinity.<sup>32</sup> This transition, making the Romans more akin to the Goths, also facilitates the union of the Romans and the Goths at the end of the play.

The invocation of the Latin phrase *suum cuique* in Shakespeare's drama is united with the assumption that Rome represents goodness, civilisation and order,<sup>33</sup> and the

<sup>31</sup> J.C. Bulman notes: "Titus lets a point of honor supersede even a bond of blood: he kills his son Mutius in order to confirm his loyalty to the emperor." *The Heroic Idiom of Shakespearean Tragedy*, Toronto–London 1985, p. 45.

<sup>32</sup> E. Giddens, *Masculinity and Barbarism in Titus Andronicus*, "Early Modern Literary Studies" 2010–2011, vol. 15, no. 1, pp. 1–35.

<sup>33</sup> J.M. Robertson, *Alleged Shakespearean Legal Allusions* [in:] *Who Wrote "Titus Andronicus"?*, London 1905, pp. 53–57. For the legal discourse in *Titus Andronicus*, see also D. Callaghan, C.R. Kyle, *The Wilde Side of Justice in Early Modern England and Titus Andronicus* [in:] *The Law in Shakespeare*, eds. C. Jordan, K. Cunningham, London 2007, pp. 38–57; G.W. Keeton, *Shakespeare's Legal and Political Background*, London 1967, *passim*.

Goths represent evil, barbarism and chaos.<sup>34</sup> However, such attempts at creating an artificial binary division into good and evil have been steadily eroding, so it is now axiomatic to note the similarities between Romans, Goths, and Moors, especially in how their respective quests for revenge are equally brutal.

Everyone professes to be in favor of justice, and yet, no matter how sincerely just solutions to problems are sought, they are often elusive and uncertain, owing to difficulties inherent in the very idea of justice.

### 3.2. Heiner Müller and *Anatomy Titus*

Heiner Müller (1929–1995) was a German (formerly East German) dramatist, poet, writer, essayist, and theatre director. He is quite often described as “the theatre’s greatest living poet” since Samuel Beckett. Müller is arguably the most important German dramatist of the 20<sup>th</sup> century after Berthold Brecht. His “enigmatic, fragmentary pieces” are a significant contribution to postmodern drama and post-dramatic theatre.<sup>35</sup>

The play *Anatomie Titus: Fall of Rome. Ein Shakespearekommentar* (= *Anatomy Titus: Fall of Rome. A Shakespearean Commentary*)<sup>36</sup> is a drama written in 1984 or 1985. It was considered a prophecy announcing the fall of the Soviet Empire – the “evil empire”. It is also judged, to a large extent, as “a translation” – a sort of a commentary to the play by Shakespeare. Müller, however, was known for his “Shakespearean variations” – comments to the works of Shakespeare (as well as other playwrights or Brecht), which were not classical adaptations, but attempts to find in the classical texts a new energy, with wealth of associations, being expressions of the inner contradictions of the described events, phenomena and emotions. It is a truly brilliant literary material. Although it definitely proves that author’s main objective was to show, in a theatrical way, the specific experience of the divided Germany and Europe, which served as the general development idea of the issues of *Germania* – the national identity of the Germans, their typical characteristics and different historical manifestations.

In *Anatomy Titus* – this particular analysis of the past – the precision with which the author removes the ground from under the feet of a fixed order in which “Rome is Rome and the Emperor is the Emperor” is absolutely striking.

The gap which appears before every *dramatis persona* is created only to legitimise the way of successive killing. But when old Titus – by making a sacrifice of the firstborn son of Tamora, the defeated Queen of the Goths, says, “I am sorry Madame, he dies, it is a custom. In order to captivate the shadows of our dead” – such a decision is still compatible with logic. The logic of this death can be – even in opposition to the action – understood, because it comes from an ancient custom, even if an inhumane one. But when Titus announces: “I want to change the sky into a bloody bladder!” – one knows that whatever happens afterwards will be devoid of such logic. And it is not just because

<sup>34</sup> R. Broude, *Roman and Goth in Titus Andronicus*, “Shakespeare Studies” 1970, vol. 6, pp. 27–34.

<sup>35</sup> E. Wright, *Postmodern Brecht: A Re-Presentation*, London–New York 1989; J. Kalb, *The Theater of Heiner Müller*, 2 rev. ed., Cambridge 2001.

<sup>36</sup> H. Müller, *Anatomie Titus: Fall of Rome – Ein Shakespearekommentar*, Münster 1985. The translation of the quotations by P. Świącicka.

of the (clinical?) madness of the Roman leader, even if Titus astutely confesses “I think I got crazy”. But because of the violation of the moral border behind which any action can be nothing else than an action in madness. Such an action becomes a consistent method of a fight against “people-wastes”.<sup>37</sup>

“The Fall of Rome”? To which Empire does Müller refer? Sometimes a spectator can have an impression that it is Europe as a continent and as an idea, the constitution of which tries to keep in check a furious animal lost in the night of doubts – over-aesthetised appearances of order and government, fetishised prosperity and happiness, and the relationship between the human colonisers and colonised, subsequent wars, economic crises, new walls, multiple manifestos, proving the inferior status of subsequent civilisation.

Europe, which makes emoticons of people and their rights understood as the museum objects. The Crystal Palace – as described by Dostoyevsky in 1862; or the European Glasshouse? One can therefore ask: is it only an architectural metaphor of today’s world? Or is it just today’s world? After all, not only today is the world a kind of hothouse, which under the pretense of heyday hides signs of decay: a relationship of power and subordination, the suffering and frustration of some and a sublime contempt of others, a brutalised and commercialized definition of vectors of human compounds, a mixture of nationalities, cultures, races, that generates the reflexes of suspicion and hatred, sometimes hardly suppressed.

Of course, in a description one can go further and try to define a demarcation line of the modern world, which delaminates the winners and the defeated – “people-wastes”, those in whom there is a power, but who also are to be afraid, and with whom no one wants to have anything to do – unless in the language of violence and trade *etc.* It is *Barbaria*, and not the world; *Barbaria* squawks with an incomprehensible language – as long as it is a language at all. But for what reason one should go on with such a description?

In Müller’s commentary, as well as a few centuries earlier, in Shakespeare’s one, the Romans “import” the Goth slaves to the capital of the world – Rome. They are proud of them – Goths are trophies, which are to demonstrate the superiority of the Roman civilisation (as the Romans understand it) over *Barbaria*. The Goths are for them only “men-wastes” who need to be shaped, so they can be incorporated into the bloodstream of the “normal” society. The problem is, however, that “people-wastes” are also beings who want their own subjectivity, and taking them into account in the collective account draws the consequences of the simple fact of their existence in the set of human relationships. But moving towards freedom inevitably leads to the confrontation with the winners. Titus, in the first reflex of bestiality, which he suffered from the Queen of the Goths Tamora (the killing of his sons), howls and calls for “justice” – just as she did while calling that “her guts are not able to accommodate the pain”, so she demands “Roman justice”. The Only Just People? Monologues about Roman justice, about its searching at the bottom of the oceans, and in the midst of waste, provoke the thought of *fundamenta* on which Rome was established, of law and custom, even if an inflation of human values, which were considered to be persistent, already was known. In this way a revenge appears and matures – a revenge, that is no longer so much a compass of hysterical behaviors arisen from the inhumane sufferings, where the violence sanctioned before

<sup>37</sup> Z. Bauman, *Życie na przemiał* [Wasted Lives. Modernity and its Outcasts], Kraków 2004, pp. 15 f., 35.

turns into mindless cruelty. It is all about a revenge as a cynical game, where cruelty, vindictiveness, unforgiveness turn into a consistent plan of torture and extermination.

The Domino effect – it is only necessary to start a mechanism, which is an overture before the final. In this way, the cynical Titus, in the name of the Roman order and “Roman Justice” incarnated in words *suum cuique*, in the name of helping out to carry the torch that could save the civilisation from the darkness, in the name of the greatness of Rome, implements, by all means, a plan of physical annihilation of *Barbaria*, for which there is no future. In this way, however, the world will lose the fundamentals of such values as freedom, solidarity, respect for diversity, human rights, and the universal justice in the formula *suum cuique*, on which it was erected and which determines its sense. But this is only the sphere of *decorum* because the real sphere undergoes a complete deconstruction. A great trap of a world, which, in the play, is a Clown representing Rome and its society?

#### 4. Where is “universal justice”?

The recourse to “Roman justice” has the purpose of justification towards an *auditorium* – the recipients of the message of one’s own actions when these cannot be justified through its formal validity. It is, therefore the recourse to *imponderabilia*, the understanding of which does not result from a normal course of philosophy, and refers to other qualities. This is invoked in the words of the aforementioned two authors, though they are separated from each other by centuries – eras – the visions of the words, and who incarnated the phenomenon of Roman justice in two words – considered the most appropriate for their own narrative and evaluative description of reality and the postulated world.

In the 16<sup>th</sup> century, Shakespeare, though in Roman justice he saw a vain philosophy scheme deprived of the links with experience and subjective feelings, referred, without any deeper analysis, to the Roman idea of justice. Müller, one of the most important German dramatist of the second half of the 20<sup>th</sup> century, screaming in the voice of Tamora who demands “Roman justice,” shows that a call for almost the last time to the Roman *fundamenta*, as well as to Roman *iura et mores*, stands in the unsolved conflict with own inhumane actions and inflation of all values that mankind has persistently considered as permanent. Is it Universalism?

There is great wisdom in the legal maxim that justice is *suum cuique*. One can that *suum cuique* is a part of Natural law. However, one must not forget that also the Devil knows Latin. Likewise, the Devil speaks the language say Natural Law, though he plies it so as to deceive. The supreme aping of Natural Law in recent history is the use of *suum cuique* – *Jedem das Seine*, by the Nazi regime. In what can only be characterized as a gross historical irony some Nazi bureaucrats chose the definition for justice – *Jedem das Seine* – as the motto to be emblazoned on the gates of the Buchenwald concentration camp. Cicero would state: *Servari enim iustitia, nisi a forti homine, nisi a sapiente, non potest* (*de fin.* 5,23,66).